SUPREME COURT, U.S.
FILED

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No.
In the
Supreme Court of the United States

WALLY YARACS,

Petitioner,

vs.

SUMMIT ACADEMY AND C.S.C. ACADEMY, INC.;
THE TOWNSHIP OF SUMMIT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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# PETITION FOR WRIT OF CERTIORARI

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41 pp

## QUESTIONS PRESENTED

1. Do due process requirements mandate that a party to a State Court proceeding be permitted to intervene in a Federal Court proceedings when the Federal Court proceeding was filed subsequent to the State Court proceeding and the Federal Court settlement in effect mooted the issues pending in the State Court proceeding?

2. Were the due process rights of petitioner violated by the fraudulent actions of a party including the frivolous filing of the Federal lawsuit and the failure of said party to inform the District Court Judge of the prior State Court proceeding involving the same issue?

3. Should a Settlement Agreement adopted by the District Court be vacated since the Settlement Agreement was not properly ratified by the Township Supervisors and since the effect of the Settlement Agreement circumvents Pennsylvania Zoning Law?

## PARTIES TO THE PROCEEDING

The parties are:

Petitioner: Wally Yaracs, (Mr. Yaracs), an individual

Respondent: Summit Academy and C.S.C. Academy, Inc. ("Summit Academy"), a nongovernmental corporate party to the proceedings before United States District Court for the Western District of Pennsylvania and the United States Court of Appeals for the Third Circuit. Petitioner states that Summit Academy is a fictitious name and C.S.C. Academy, Inc., is a parent corporation for Summit Academy and is not a publicly-traded corporation.

Respondent: The Township of Summit is a Township in the Commonwealth of Pennsylvania and is a party to the proceedings before the United States District Court for the Western District of Pennsylvania and the United States Court of Appeals for the Third Circuit.

## TABLE OF CONTENTS

QUESTIONS PRESENTED ..... i

PARTIES TO THE PROCEEDINGS ..... ii

TABLE OF CONTENTS ..... iii

TABLE OF AUTHORITIES ..... iv

OPINIONS BELOW ..... 1

JURISDICTION ..... 4

STATUTORY PROVISIONS INVOLVED ..... 4

STATEMENT OF THE CASE ..... 4

REASONS FOR GRANTING THE WRIT ..... 9

CONCLUSION ..... 18

APPENDIX

CIRCUIT COURT OPINION ..... 1a

ORDER DENYING REHEARING ..... 6a

DISTRICT COURT DECISION ..... 8a

## TABLE OF AUTHORITIES

### CASES


Bank of America vs. Hotel Rittenhouse Associates, 844 F.2d 1050 (3d Cir. 1988) ..... 10, 12
Bougher vs. University of Pittsburgh, 882 F.2d 74, 78 (3d Cir. 1989) ..... 15
Burkhalter vs. Montgomery Ward and Company, 676 F.2d 291 (8th Cir. 1982) ..... 10
Grubbs vs. Norris, 870 F.2d 343 (6th Cir. 1989) ..... 10
In Re Fine Paper Antitrust Litigation, 695 F.2d 494, 500 (3d Cir. 1982) ..... 13
Officers for Justice vs. Civil Service Commission, 934 F.2d 1092 (9th Cir. 1991) ..... 10, 13
Owens vs. Okure, 488 U.S. 235, 236, 109 S.Ct. 573, 574, 102 L.Ed. 2d. 594 (1989) ..... 15
Pyle-National Company vs. Amos, 172 F.2d 425 (7th Cir. 1949) ..... 10
Triax Company vs. TRW, Inc., 724 F.2d 1224 (6th Cir. 1984) ..... 10
U.S. vs. Alcan Aluminum, Inc., 25 F.3d 1174 (3d Cir. 1994) ..... 10, 12
U.S. Ex Rel. McGough vs. Covington Technologies, 967 F.2d 1391 (9th Cir. 1992) ..... 10
Wilson vs. Garcia, 471 U.S. 261, 276, 105 S.Ct. 1938, 1947, 85 L. Ed. 2d 254 (1985) ..... 15


### STATUTES


Federal Rule of Civil Procedure 24(a)(2) ..... 4, 9
28 U.S.C.A. §1254(1) ..... 4
28 U.S.C.A. §1291 ..... 4
42 U.S.C.A. §1983 ..... 1, 4, 15
42 Pa. C.S.A. §5524 ..... 15
65 Pa. C.S.A. §1102, §1103(a) ..... 16

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WALLY YACAS, Petitioner, by undersigned counsel, under appropriate rules of this Court requests that this Court issue a writ of certiorari to the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The original action in this matter began as a Civil Rights Complaint filed by Summit Academy pursuant to 42 U.S.C.A. §1983 on March 28, 2002 against the Township of Summit, Butler County, Pennsylvania. The Complaint consists of 156 paragraphs. The statements made in the first 97 paragraphs of the Complaint are related to facts which occurred in 1996 or 1997. The facts alleged in the remainder of the paragraphs relate to events which occurred in the year 2000 or later.

The Supervisors of Summit Township through their legal counsel had two telephone conversations with Summit Academy with regard to a possible Settlement Agreement regarding the Federal lawsuit. The second of the telephone conversations took place on May 1, 2002, prior to a regularly scheduled Supervisor's meeting. At the Supervisor's meeting on May 1, 2002, Supervisor

Harold Schnur made a Motion to Pass a Resolution to Settle the Instant Federal Court Litigation. Supervisor John Oesterling also voted in favor of the Resolution and the third Supervisor, Regis Karch, abstained. No prior public notice was given by the Supervisors of their intention to consider any Settlement Agreement at this Supervisor's meeting despite the fact that they knew of the great interest of the residents of Summit Township regarding this issue. The day following the passage of the Motion to Adopt the Settlement Agreement, on May 2, 2002, counsel for Summit Academy and Summit Township presented a Motion to the District Court for the Western District of Pennsylvania and the District Court Judge signed an Order adopting the Settlement Agreement as an Order which settled the entire lawsuit.

In May of 1996, Summit Academy purchased a parcel of land in Summit Township for the purpose of establishing a residential juvenile correctional facility. At that time the Summit Township Supervisor were considering adoption of the Zoning Ordinance in the Township. A Zoning Ordinance was adopted and various litigation took place between Summit Academy and the Township due to Summit Academy's continued failure to comply with the Ordinance. Amendments were also enacted to the Zoning Ordinance which limited residential juvenile correctional facilities to a maximum of 350 juvenile offenders. The facility purchased by Summit Academy is not capable of housing more than 350 juvenile offenders. At no time has Summit Academy had more than 350 juvenile offenders at their property. However, in March of 2000, during the pendency of the litigation regarding Summit Academy's violation of the original Zoning Ordinance, Summit Academy filed a Building Permit Application No. 24082 requesting a permit to construct two additional dormitory buildings. At the time of the filing of the instant lawsuit on March 28, 2002, Summit Academy was a party to the proceeding before the Summit Township Zoning Hearing Board related to the Building Permit Application which had been made in March of 2000. Said Building Permit Application No. 24082 was denied by the Township Permit Officer and Summit Academy appealed that determination. Due to other litigation

pending between Summit Academy and Summit Township, there was a delay in scheduling a hearing on that Appeal. Ultimately, however, a hearing was held before the Zoning Hearing Board on January 21, 2002. At that time, Petitioner, Mr. Yaracs, along with eight other individual property owners in Summit Township filed an Appearance and were made parties to that proceeding. Ultimately, after the filing of the instant lawsuit by Summit Academy, the Summit Township Zoning Hearing Board on April 10, 2002 issued a Decision in favor of Summit Academy.

One of the provisions in the Settlement Agreement of May 1, 2002 which was adopted by the District Court as an Order on May 2, 2002 is paragraph 4 of the Agreement which provides that the Building Permit Application No. 24082 is approved. That is the same Building Permit Application which was the subject of the hearing before the Summit Township Zoning Hearing Board to which Mr. Yaracs was a party. Neither Mr. Yaracs nor any of the other individuals who filed Appearances with the Zoning Hearing Board were parties to the secret negotiations between Summit Academy and the Township which resulted in the Settlement including the issuance of the Building Permit.

On May 30, 2002, Mr. Yaracs filed a Petition to Intervene and Motion to Vacate Consent Order with the United States District Court for the Western District of Pennsylvania. Ultimately, the District Court Judge denied the Motion to Intervene and made no ruling on the Motion to Vacate Consent Order. The Petitioner appealed and on June 5, 2003, the panel for the United States Court of Appeals for the Third Circuit affirmed the Decision of the District Court Judge. In the five page Opinion of the panel, the Court stated that "[a]lthough there are several reasons for affirming, we conclude that it was not error to deny the Application to Intervene because it was not timely".

On July 11, 2003, the United States Court of Appeals for the Third Circuit denied a Petition for Panel Rehearing and/or En Banc Rehearing.

## JURISDICTION

Subject matter jurisdiction for the United States District Court for the Western District of Pennsylvania for the original Civil Rights Complaint filed by Respondent, Summit Academy is pursuant to 42 U.S.C.A. §1983.

Subject matter jurisdiction for the Court of Appeals for the Third Circuit was invoked pursuant to 28 U.S.C.A. §1291.

Jurisdiction of this Honorable Court is invoked under 28 U.S.C.A. §1254(1).

## STATUTORY PROVISIONS INVOLVED

Rule 24(a)(2) of the Federal Rules of Civil Procedure provides as follows:

> **(a) Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

## STATEMENT OF THE CASE

As previously indicated, Summit Academy purchased a parcel of land in Summit Township, Pennsylvania in May of 1996 for the purpose of establishing a residential juvenile correctional facility. The facility purchased by the Academy is not capable of housing more than 350 juvenile offenders and at no time has Summit Academy had more than 350 juvenile offenders at their property. Summit Academy had been engaged in various litigation with Summit Township regarding violations by Summit Academy of the Township's Zoning Ordinance. In March of 2000, during the

pendency of some of the litigation regarding Summit Academy's violations of the original Zoning Ordinance, Summit Academy filed a Building Permit Application No. 24082 requesting a permit to construct two additional dormitory buildings. Said Building Permit Application No. 24082 was denied by the Summit Township Permit Officer and Summit Academy appealed that determination. Due to the other litigation pending between Summit Academy and Summit Township, there was a delay in scheduling a hearing on that appeal. During that delay, the then Summit Township Supervisors negotiated with Summit Academy regarding a comprehensive settlement of the outstanding issues between the parties. Said negotiations were kept a secret for a number of months until February 19, 2001 at which time the text of the proposed agreement which had been negotiated between Summit Academy and the Township was published in the special notices section of the local newspaper, the Butler Eagle. Said Notice advised that the proposed Settlement Agreement was to be considered by the Summit Township Supervisors at their meeting two days later, on February 21, 2001 and that an informational public meeting was being held the following day, on February 20, 2001.

The proposed Settlement Agreement of February 2001 was in a number of respects similar to the one ultimately adopted by two of the Supervisors on May 1, 2002, and adopted as a Consent Decree by the District Court Judge, however, the February 2001 Agreement provided for a maximum of 700 juvenile offenders at the facility by January 2009. The May 1, 2002 Settlement Agreement which was ultimately adopted provides for a maximum of 1200 juvenile offenders at the facility. In an Article dated February 20, 2001, in the Butler Eagle, published the morning of the informational public meeting being held on February 20, 2001, one of the Supervisors, John Oesterling, indicated that he planned to vote in favor of the Settlement proposal.

On February 20, 2001, at the public informational meeting, virtually all of the approximately 200 people attending that meeting opposed the proposal to settle the litigation. Not one individual

indicated that they were in favor of accepting the agreement. The following day at the Supervisor's meeting on February 21, 2001, the Summit Township Supervisors rejected the proposed agreement with Summit Academy, with all three Supervisors voting against the proposal, including Supervisor Oesterling who had previously indicated that he intended to vote in favor of the Agreement.

After these settlement negotiations failed, subsequently there was a hearing held before the Summit Township Zoning Hearing Board related to Summit Academy's denial of its Building Permit Application No. 24082. At that time, nine individual residents of Summit Township, including Petitioner, Mr. Yaracs, filed an Appearance and were made parties to that proceeding. That hearing was held on January 21, 2002. At the hearing, the Solicitor for Summit Township and counsel for the Academy made legal arguments to the Zoning Hearing Board with regard to their positions. At that time, counsel for Summit Township vigorously argued that the Permit Officer properly denied the Building Permit Application filed by Summit Academy in March of 2000. The Solicitor for the Zoning Hearing Board requested counsel for Summit Township and Summit Academy to submit Briefs to the Zoning Hearing Board prior to the Decision by the Zoning Hearing Board. Both counsel filed Briefs with the Zoning Hearing Board, including the detailed arguments by Summit Township Solicitor in support of the Permit Officer denying the Building Permit to Summit Academy. All parties were aware that on April 10, 2002, the Summit Township Zoning Hearing Board was to meet and issue a Decision with regard to whether the Building Permit was properly denied. Thirteen days prior to the scheduled announcement by the Zoning Hearing Board of its Decision, Summit Academy, on March 28, 2002, filed the within Civil Rights action against the Township. An Article appeared in the Butler Eagle on April 3, 2002 indicating that Summit Academy had filed the lawsuit in Federal Court for "an unspecified amount of damages". Said Article did not indicate that the Complaint had asked for any injunctive or other equitable relief, but merely, "an unspecified amount of damages".

The Supervisors in office at the time of the vote of February 21, 2001 included two of the Supervisors who are presently in office, Supervisor John Oesterling and Supervisor Regis Karch. The other Supervisor did not run for reelection and retired after his term expired in early 2002. In the fall of 2001, there was an election contest for the open position on the Summit Township Board of Supervisors. The individual elected for the third Supervisor's seat was Harold Schnur who has a conflict of interest with regard to any matter related to Summit Academy due to financial interests his family member has with Summit Academy.

The instant lawsuit was filed clearly to intimidate the Supervisors of Summit Township to agree to a settlement which was not in the Township's best interest. Since nine individual property owners had become parties to the Zoning Hearing Board litigation, Summit Academy needed to have another lawsuit pending so that they could intimidate the Supervisors into an agreement which was not in the Township's best interest. The instant Civil Rights Complaint filed by Summit Academy clearly was frivolous. Most of the allegations in the Complaint were well beyond the applicable Statute of Limitations. Further, the timing of the Complaint was clearly filed in order to intimidate both the Summit Township Zoning Hearing Board and Summit Township Supervisors. Further, Summit Academy was aware that the newly elected Supervisor, Harold Schnur, who clearly had a conflict of interest with regard to any matters related to Summit Academy, would vote in favor of any Settlement Agreement which favored Summit Academy. With that Supervisor on their side, Summit Academy knew that they only needed to intimidate one of the other two Supervisors in order to obtain a favorable settlement.

At the April 10, 2002 meeting of the Summit Township Zoning Hearing Board, the Zoning Hearing Board announced its Decision in favor of Summit Academy. Apparently, within a couple of days after that announcement, the Supervisors through their legal counsel had a telephone conversation with Summit Academy with regard to a possible Settlement Agreement regarding the Federal

lawsuit. A second telephone conversation took place on May 1, 2002 prior to a regularly scheduled Supervisors meeting. At the Supervisors meeting on May 1, 2002, Supervisor Harold Schnur made a Motion to Pass a Resolution to settle the instant Federal Court litigation. Said Motion was made without Supervisor Schnur revealing his conflict of interest with Summit Academy which is in violation of Pennsylvania Law. Supervisor John Oesterling also voted in favor of the resolution and the third Supervisor, Regis Karch, abstained. No prior public notice was given by the Supervisors of their intention to consider any Settlement Agreement at this Supervisors meeting despite the fact that they knew of the great interest of the residents of Summit Township regarding this issue as evidenced by the events occurring in February of 2001 regarding the prior proposed Settlement Agreement. The Settlement Agreement agreed to by the Supervisors on May 1, 2002 is significantly less favorable to Summit Township as it allows 1200 residents at the property rather than the prior proposed Settlement Agreement which only provided 700 residents. At the Supervisors meeting on May 1, 2002, legal counsel for the Supervisors indicated that two telephone conversations had taken place between the Supervisors and legal counsel with regard to the negotiation of the agreement prior to the Board of Supervisors meeting that evening.

Petitioner, Mr. Yaracs, filed a Notice of Zoning Appeal to the April 10, 2002 Decision of the Summit Township Zoning Hearing Board with the Court of Common Pleas of Butler County, Pennsylvania and said Appeal is presently pending before the Commonwealth Court of Pennsylvania. One of the provisions of the Settlement Agreement of May 1, 2002 which was adopted by the District Court as an Order on May 2, 2002 is Paragraph 4 of the Agreement which provides that the Building Permit Application No. 24082 dated March 13, 2000 is approved. That is the same Building Permit Application which is presently on appeal in the Commonwealth Court of Pennsylvania. Neither Mr. Yaracs nor any of the other nine individuals who filed Appearances with the Zoning Hearing Board were parties to the secret negotiations between the Academy and the Township which resulted in the

settlement including the issuance of the Building Permit.

On May 30, 2002, Mr. Yaracs filed a Petition to Intervene and Motion to Vacate Consent Order with the United States District Court for the Western District of Pennsylvania. Ultimately, the District Court Judge denied the Motion to Intervene and made no ruling on the Motion to Vacate Consent Order. On June 5, 2003, the panel for the United States Court of Appeals for the Third Circuit affirmed the Decision of the District Court Judge. The panel filed a five-page Opinion of the Court. In the Opinion the Court stated that "[a]lthough there are several reasons for affirming, we conclude that it was not error to deny the Application to Intervene because it was not timely". At the end of its Opinion the Court also stated that it affirmed the District Court for the reasons set forth in its thorough Opinion with the emphasis on the untimeliness of the Motion to Intervene. While the panel indicated that it affirmed the entire District Court Opinion, it clearly appears that the timeliness was its main concern. The Court of Appeals on July 11, 2003 denied the Petition for Rehearing.

## REASONS FOR GRANTING WRIT

### I. THE COURT OF APPEALS FOR THE THIRD CIRCUIT ERRED IN AFFIRMING THE DISTRICT COURT'S DENIAL OF PETITIONERS PETITION TO INTERVENE.

#### A. Due process requires that Petitioner is entitled to intervene as of right pursuant to Rule 24(a)(2).

An individual is permitted to intervene as of right pursuant to Federal Rule 24(a)(2) when he claims an interest relating to the property or transaction which is the subject of the action, is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless his

interest is adequately represented by existing parties. As indicated previously, Summit Academy filed the within Civil Rights Complaint on March 28, 2002. Mr. Yaracs filed a Petition to Intervene approximately two months later on May 31, 2002. While typically a mere two month delay in filing a Petition to Intervene would be granted in almost every case, the Court in this case was concerned about the timeliness of the filing of the Petition to Intervene because a Consent Decree was signed by the District Court Judge on May 2, 2002 adopting the Settlement Agreement signed on May 1, 2002 settling and disposing of all issues in the lawsuit. Mr. Yaracs filed his Petition to Intervene and Motion to Vacate Consent Order within thirty days of the adoption of the Settlement Agreement by the Summit Township Board of Supervisors.

Many Federal Court's have allowed intervention even after settlements of cases have been made, judgments entered, or dismissals taken place. See U.S. vs. Alcan Aluminum, Inc., 25 F.3d 1174 (3d Cir. 1994); Bank of America vs. Hotel Rittenhouse Associates, 844 F.2d 1050 (3d Cir. 1988); U.S. Ex Rel. McGough vs. Covington Technologies, 967 F.2d 1391 (9th Cir. 1992); Officers for Justice vs. Civil Service Commission, 934 F.2d 1092 (9th Cir. 1991); Grubbs vs. Norris, 870 F.2d 343 (6th Cir. 1989); Triax Company vs. TRW, Inc., 724 F.2d 1224 (6th Cir. 1984); Burkhalter vs. Montgomery Ward and Company, 676 F.2d 291 (8th Cir. 1982); Pyle-National Company vs. Amos, 172 F.2d 425 (7th Cir. 1949).

While the District Court Judge recognized that a final Judgment is not a bar to filing a Petition to Intervene, the District Judge stated as follows:

> In addition, Petitioner offers no persuasive reason for the delay in seeking to protect his asserted interests. Petitioner did not seek to intervene in this action until May 31, 2002, almost one month after the case was settled and discontinued. At an earlier stage in these disputes, he knew, or should have known, of the alleged risks to his

> physical safety and zoning appeal, and worked to protect those interests. The pleadings indicate that the parties were engaged in a long and well-publicized dispute regarding the Township's ordinances, and the number of residents at Plaintiffs' facility. The facts alleged in Petitioner's own filings indicate that he closely monitored the dispute. Under the circumstances, Petitioner's suggestion, that he did not intervene in the litigation because a newspaper article about the litigation stated that Plaintiffs sought damages (rather than a permit), is difficult to accept. Petitioner has not demonstrated that circumstances prevented him from making an effort to protect his interests at an earlier stage in this proceeding. Even without holding him to knowledge of the Complaint at the time that it was filed, there are no extraordinary circumstances that would warrant intervention at this stage in the litigation, and the totality of the circumstances lead me to conclude that the Petition to Intervene is untimely.

The District Court Judge's statement that Mr. Yaracs knew or should have known at an earlier stage in the Federal lawsuit of the alleged risks to his physical safety and zoning appeal and work to protect those interests is clearly not accurate. The only information Mr. Yaracs had with regard to the Federal lawsuit was the information provided in the Article in the Butler Eagle on April 3, 2002. There is nothing in that Article to suggest that Mr. Yaracs rights pursuant to the Zoning appeal in which he was at that time a party was at risk. Further there was no indication pursuant to that Article that his failure to immediately Petition to Intervene in that Federal lawsuit would result in increased risks to his physical safety. That Article merely indicated that Summit Academy was seeking monetary damages from Summit Township for past alleged violations of their civil rights, most of it which were beyond the Statute of Limitations. Further, even had Mr. Yaracs obtained a copy of the Complaint filed in the Federal Court, he still would have had no idea that his rights regarding the Zoning Appeal to which he was a party, nor his physical safety was at any risk due to that

Federal lawsuit. A close examination of the Complaint reveals that only monetary damages and injunctive relief barring the Township in engaging in "future exercises of their governmental authority" were requested. To expect Mr. Yaracs to be able to know that approximately five weeks after the filing of the civil rights lawsuit the Township would sign a Settlement Agreement granting relief not requested in the Complaint is beyond the ability of any person to know. The premise upon which the District Court Judge determined that the Petition to Intervene was untimely is simply false. Further, until the Supervisors meeting the evening of May 1, 2002, every indication from the Township was that it was vigorously opposing any expansion by the Academy of its facility. Twenty days earlier when the Zoning Hearing Board announced its decision the Township was still vigorously opposing any expansion by the Academy by opposing its building permit application. Frankly had Mr. Yaracs attempted to intervene prior to May 1, 2002, he would have been denied intervention since the Township until that time was adequately protecting his interests.

The Court of Appeals for the Third Circuit stated in the U.S. vs. Alcan Aluminum case, supra. at 1183, that "[t]o the extent the length of time an applicant waits before applying for intervention is a factor in determining timeliness, it should be measured from the point at which the applicant knew, or should have known, of the risk to its rights". In that case the Court of Appeals for the Third Circuit reversed the District Court determination that the Petition to Intervene was not timely filed, despite the fact that the intervenors filed their Petition to Intervene four years after the case had been filed and two months after the case had been settled. Similarly in the Bank of America case, supra., the Court of Appeals for the Third Circuit again reversed the decision of the District Court Judge denying the Petition to Intervene on timeliness grounds despite the fact that the Petition to Intervene was filed four years after the case had been filed and two years after the settlement had taken place. The first moment Mr. Yaracs knew that his rights were at risk was on May 1, 2002 when the Settlement Agreement was signed by two Supervisors granting the Building Permit Application to which Mr. Yaracs was an

opposing party. Mr. Yaracs filed the Petition to Intervene within 30 days of that time which was clearly timely.

In the case of In Re Fine Paper Antitrust Litigation, 695 F.2d 494, 500 (3d Cir. 1982) the Court of Appeals for the Third Circuit stated that a Court should consider three factors to aid in evaluation of the timeliness issue. Those factors include (1) how far the proceedings have gone when the movant seeks to intervene; (2) the prejudice which resultant delay might cause to other parties; and (3) the reason for the delay. In this case all three factors favor finding in favor of granting the Petition to Intervene. In this case not even an Answer had been filed to the Complaint by the Township. No Court hearings or proceedings had taken place as the case had only been filed five weeks prior to the entry of the Consent Decree. There is minimal prejudice to the parties as there were only two telephone conversations that took place regarding the negotiation of the agreement. Finally the reason for the delay is that there was no possible way that Mr. Yaracs could have either known that his rights may have been effected by the lawsuit prior to May 1, 2002 or could have known that the Township was going to take an opposing position when they just weeks earlier were arguing against any expansion by the Academy. In the case of Officers for Justice vs. Civil Service Commission, supra., the Court of Appeals for the Ninth Circuit held that 16 years after the suit was filed and 10 years after the consent decree the proposed intervenor could intervene since his interests were no longer being adequately protected by the parties.

Finally with regard to the other factors which must be shown in order to be granted intervention, those factors are also clearly present. Mr. Yaracs' interest which is affected by the Settlement Agreement is his interest in the Building Permit litigation which is ongoing in the Commonwealth Court of Pennsylvania. Because of his concern for his personal safety he became a party to the litigation regarding the Building Permit Application requested by Summit Academy. Mr. Yaracs opposes any further expansion by Summit Academy and he acquired a recognized legal right regarding that issue when he became a party to the litigation regarding the building permit. The Settlement Agreement

extinguishes that legal right as one of its terms is to grant that building permit. To date the Pennsylvania Courts have been unwilling to rule on the merits of the Building Permit appeal due to the existence of the District Court Consent Order adopting the Settlement Order. Mr. Yaracs rights have clearly been affected. Finally it is clear that no other party is adequately representing his rights. Both parties clearly oppose his rights as evidenced by entering into the settlement.

The Lower Courts' denial of Petitioner's Motion to Intervene has clearly violated Petitioner's due process rights under the Constitution. Petitioner was clearly a party with an interest in the prior State Court proceeding with regard to Summit Academy's Building Permit Application. In order to circumvent the State Court proceedings, Summit Academy filed the instant frivolous civil rights action against Summit Township. With the help of a Supervisor who clearly had a conflict of interest and is not permitted under Pennsylvania law to vote on any matter related to Summit Academy, it intimidated one other Supervisor to vote in favor of a Settlement Agreement which clearly was not in the interest of the Township and which in effect mooted Mr. Yaracs rights in the State Court proceeding. Petitioner urges this Honorable Court to grant this Petition to confirm due process standards which must apply in this case.

B. Fraud by a Party

In this case Summit Academy has clearly perpetrated a fraud on the Federal Courts initially by filing a frivolous civil rights lawsuit against Summit Township in order to avoid the then pending State Court proceeding and second by presenting the Settlement Agreement to the District Court without advising the Court of the pending litigation before the Summit Township Zoning Hearing Board. If the District Court been made aware of the prior State Court proceedings and the effect the Settlement Agreement would have had on the other parties who were included in that litigation, the District Court would have undoubtedly made the other parties

aware of the proposed Consent Degree and allowed an opportunity for objection prior to taking any action.

As previously stated, the Civil Rights Complaint filed by Summit Academy consists of 156 paragraphs, 97 paragraphs of which are related to events occurring in 1996 and 1997. It is well established that claims brought under 42 U.S.C. Section 1983 are subject to the State Statute of Limitations governing personal injury actions. See e.g. Owens vs. Okure, 488 U.S. 235, 236, 109 S.Ct. 573, 574, 102 L.Ed. 2d. 594 (1989); Wilson vs. Garcia, 471 U.S. 261, 276, 105 S.Ct. 1938, 1947, 85 L. Ed. 2d 254 (1985). In Pennsylvania the Statute of Limitations for personal injury actions is two years. 42 Pa. C.S.A. Section 5524; Bougher vs. University of Pittsburgh, 882 F.2d 74, 78 (3d Cir. 1989). If in fact Summit Township was violating Summit Academy's Civil Rights, it seems that a lawsuit asserting such would have been filed in 1996 when Summit Academy asserts such action began. While it was not obvious at the time that the lawsuit was filed on March 28, 2002, it did become obvious later why the lawsuit was filed at that time.

Subsequent to the filing of the Civil Rights Complaint, no action was taken by either Summit Academy or Summit Township by the filing of any further papers including an Answer or Response to the Complaint until the Settlement Agreement was presented to the Court on May 2, 2002 for adoption as a Consent Decree. At the time that the Settlement Agreement was presented to the District Court, Summit Academy committed another fraud by failing to advise the District Court Judge that one of the major provisions of the Settlement Agreement, that approving the Building Permit which was the subject of the litigation before the Summit Township Zoning Hearing Board would in effect moot that proceeding and that nine other individuals, not parties to the Federal Court litigation would have their rights adversely affected by the Consent Degree. Had the District Court been aware of the existence of the State Court litigation and the effect the Settlement Agreement would have on said litigation, the Judge may have required the Consent of or at least notice to the nine other parties prior to adoption of the Consent

Degree. Unfortunately, Summit Academy never advised the District Court Judge of the existence of the State Court litigation or the nine other individuals who were parties to that litigation prior to requesting the Court to sign the Consent Degree. Unfortunately, neither the District Court nor the Court of Appeals for the Third Circuit have rectified this fraud and Petitioner's rights have been violated because of it. Petitioner urges this Honorable Court to grant the Petition due to the clearly erroneous rulings by the District Court and Court of Appeals.

### C. The Settlement Agreement in This Matter Should Have Been Vacated by The District Court

#### 1. The Summit Township Supervisors improperly ratified the Settlement Agreement due to a conflict of interest.

Summit Academy has admitted that Larry Schnur, the son of Supervisor, Harold Schnur farms approximately 15 acres of property owned Summit Academy. They further admit that Larry Schnur farms the property belonging to them at no charge. 65 Pa. C.S.A. Section 1102 of the Public Official and Employee Ethics Act of Pennsylvania provides that a conflict of interest for a public official includes use by a public official of the authority of his office for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or his immediate family is associated. In that section, "immediate family" is defined a parent, spouse, child, brother or sister. Section 1103(a) of that Act provides that no public official shall engage in conduct that constitutes a conflict of interest. In the instant case, Harold Schnur neither abstained from voting nor revealed to the Board of Supervisors his conflict of interest either orally or in writing as required by this Statute. It is clear that he would have been required to abstain from the vote on the Settlement Agreement. Further, had he revealed his conflict of interest, the other vote in

favor of the Settlement Agreement which was cast by Supervisor, John Oesterling, may, in fact, have changed. Mr. Oesterling, is the same supervisor who changed his mind with regard to initially voting in favor of a prior Settlement Agreement with Summit Academy but ultimately voting against the proposed Settlement Agreement with Summit Academy in February of 2001. Since Supervisor Schnur did not reveal his conflict of interest, under no circumstance is he permitted to vote. Therefore, the District Court should have vacated the Settlement Agreement since it was not properly adopted by the Summit Township Supervisors.

2. The Settlement Agreement in effect has either amended the Zoning Ordinance or granted a Variance in favor of Summit Academy.

The effect of the Settlement Agreement has resulted in either an Amendment to the Zoning Ordinance or a Variance being granted to Summit Academy. The present Zoning Ordinance in Summit Township only permits 350 juvenile offenders to reside at a facility such as the one owned by Summit Academy. If Summit Academy wanted to challenge that Ordinance it could have done so legally pursuant to the Pennsylvania Municipalities Planning Code and through the Courts. It did not do so. Further, if Summit Academy wanted to obtain a Variance from Summit Township in order to permit more than 350 juvenile offenders to live at their site, they could have done so by filing a request for Variance pursuant to the provisions of the Summit Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code. They have not done that either. In order to either challenge the present Zoning Ordinance, grant a Variance or amend the present Zoning Ordinance, public notification through advertising and public hearings would have been required to be held. Summit Academy chose to file the instant federal lawsuit in order to have the same result accomplished without having any of the residents of Summit Township have any input into these actions being taken and by

having a secret agreement drawn up within the course of 5 weeks after they filed their lawsuit. The provisions of the Settlement Agreement clearly have the effect of either amending the Ordinance or granting a Variance to Summit Academy. To argue otherwise is ludicrous. To not allow Mr. Yaracs intervene in this matter, would not allow any public participation in a very significant change to the make-up of the zoning of Summit Township. Summit Academy has all of the protections of the Laws of Pennsylvania to attempt to either amend the Zoning Ordinance or obtain a Variance if it wants to have more residents than the present Ordinance allows. Summit Academy should not be permitted to do something that it either could not do or did not want to do through the proper procedures through the Pennsylvania Courts.

## CONCLUSION

THEREFORE, Petitioner, Wally Yaracs, requests of this Honorable Court that it grant his Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

Leslie B. Mathis

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-3608

SUMMIT ACADEMY;
C.S.C. ACADEMY, INC.,

Appellees,

v.

THE TOWNSHIP OF SUMMIT,

Appellee,

WALLY YARACS,*

Appellant.

*(Pursuant to Rule 12(a),
Federal Rules of Appellate Procedure)

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. No. 02-cv-0606)
District Judge: The Honorable Donetta W. Ambrose

Submitted under Third Circuit LAR 34.1(a)
Thursday, May 15, 2003

Before: RENDELL, SMITH and ALDISERT, Circuit Judges.

(Filed June 5, 2003)

OPINION OF THE COURT

ALDISERT, Circuit Judge.

Wally Yaracs, a resident of the Township of Summit, appeals from the district court's Opinion and Order denying his application to intervene in a civil rights action. He applied after the case had been marked closed following a court-approved settlement.

Although there are several reasons for affirming, we conclude that it was not error to deny the application to intervene because it was not timely. The case was over, the action was settled and the case was marked closed before Appellant filed a petition to intervene.

Because we write only for the parties who are familiar with the facts and the proceedings at the trial court level, we will limit our discussion to the controlling legal precept.

I.

Under Rule 24(a), Federal Rules of Civil Procedure, a person is entitled to intervene if (1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the applicant's ability to protect that interest may be impaired or impeded by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation. Although these requirements are intertwined, Appellant bears the burden of proving each specific element in order to intervene as of right. United States v. Alcan Aluminum, 25 F.3d 1174, 1181 n.9 (3d Cir. 1994).

Against this legal backdrop, we superimpose the long-standing and well publicized nature of the parties dispute which is summarized in the following section. This combination of precept and fact compels us to look no further than the first requirement of Rule 24(a). We are persuaded that Appellant was on notice of the ongoing dispute and failed to file a timely application for intervention.

II.

By his own admission, Appellant is extremely interested in issues that are presented to the Board of Supervisors of Summit Township. In fact, in the fall of 2001, he was an unsuccessful candidate for an open position on the Board. In the years leading up to and including his candidacy, one of the most exacting issues facing the Board encompassed the heart of the present appeal.

In 1996, Summit Academy– a residential juvenile correction facility– arranged to buy a plot of land from the Capuchin Province of St. Augustine. At this time, the Township of Summit had no zoning ordinance pertaining to land use. Concerned about the Academy's potential land use, the Board began to pursue the passing of such an ordinance in the name of safety for local residents. Shortly thereafter, an article appeared in the local newspaper, the *Butler Eagle*, entitled "St. Fidelis to Be Youth Center," which explained the proposed conversion of the seminary. Local residents echoed the Board's concerns by forming an interest group called "Safe Areas for Everyone," (SAFE).

After a period of drafting and public hearings on the proposed ordinance, it was enacted in its final form on March 19, 1997, and it ostensibly prohibited Summit Academy's proposed use. On May 5, 1997, the Township sent a Notice of Violation of the ordinance to the Academy, stating that because it was operating a "boarding home for sheltered care" that exceeds 30 residents, it had contravened the law.

The Academy appealed to the Summit Township Zoning Hearing Board on February 28, 2000. The Hearing Board ruled in favor of the Academy and the Notice of Violation was dismissed. The Township unsuccessfully appealed this decision to the Court of Common Pleas of Butler County and thereafter to the Commonwealth court. This later appeal was withdrawn and the Common Pleas decision became final.

In March 2000, the Academy filed a building permit application that was denied by the Permit Officer on June 27, 2000. The Academy appealed this denial. After unsuccessful attempts to

settle in the spring of 2001, during the pendency of this new dispute, the Township voted to amend the zoning ordinance in another attempt to limit the Academy's use of its land. Following a variety of hearings, testimony and requests for meetings with which the parties are familiar, the Academy filed a civil rights action against the Township on March 28, 2002. Details of this new action were carried on the front page of the *Butler Eagle* on April 3, 2002 in an article headlined "Summit Academy Files Suit."

Settlement negotiations followed and on May 1, 2002, at a public meeting, the solicitor for the Township explained the terms of a resolution and consent order. When the floor was opened for public comment, no one came forward. The resolution was adopted by the supervisors and entered by the district court on May 2, 2002.

III.

Mr. Yaracs did not attempt to intervene in this action until almost a month after the resolution was entered – on May 31, 2002. At that time he filed the petition, no action existed in which to intervene. The docket was closed, and the consent order resolved all outstanding issues between the parties. The dispute between the Township and the Academy no longer existed.

Under these circumstances, the district court discussed, in detail, the multiple reasons why it was denying the right to intervene. We affirm the district court for the reasons set forth in its thorough opinion with emphasis on the untimeliness of the motion to intervene.

* * * * *

We have considered all contentions raised by the parties and conclude the no further discussion is necessary.

The judgment of the district court will be affirmed.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Ruggero J. Aldisert
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-3608

SUMMIT ACADEMY; C.S.C. ACADEMY, INC.,

v.

THE TOWNSHIP OF SUMMIT,

WALLY YARACS,*
Appellant
*(Pursuant to Rule 12(a),
Federal Rules of Appellate Procedure)

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. No. 02-cv-00606)
District Judge: The Honorable Donetta W. Ambrose

Submitted under Third Circuit LAR 34.1(a)
Thursday, May 15, 2003

Before: RENDELL, SMITH and ALDISERT, Circuit Judges

Present: SCIRICA*, Chief Judge, SLOVITER, NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, CHERTOFF, ALDISERT, *** and BECKER** Circuit Judges

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*Judge Scirica succeeded to the position of Chief Judge on May 4, 2003

**Judge Becker completed his term as Chief Judge on May 4, 2003

***Vote limited to panel rehearing only

SUR PETITION FOR REHEARING WITH
SUGGESTION FOR REHEARING EN BANC

The petition for rehearing filed by Appellant having been submitted to the judges who participated in the decision of this Court, and to all of the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing and a majority of the circuit judges of the circuit in a regular active service not having voted for rehearing by the court *en banc*, the petition for rehearing is DENIED.

By the Court,

/s/ Ruggero J. Aldisert
Circuit Judge

Dated: July 11, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 02-606

SUMMIT TOWNSHIP and C.S.C. ACADEMY, INC.,

Plaintiffs,

-vs-

THE TOWNSHIP OF SUMMIT,

Defendant.

---

WALLY YARACS,

Movant.

AMBROSE, District Judge.

**OPINION**
**and**
**ORDER OF COURT**

**SYNOPSIS**

Petitioner seeks to intervene in this closed case, in which Plaintiffs, which operate a residential juvenile correctional facility, alleged that the Township of Summit[1] violated their civil rights by arbitrarily and capriciously denying them a building permit and

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[1]For purposes of clarity, I refer to the Township and its Supervisors collectively as the "Township."

attempting to prevent the operation of their facility.

The long-standing and well-publicized nature of the parties' dispute provides the background for my decision today. The circumstances of the dispute, and its resolution by various adjudicating bodies, are thoroughly set forth in the parties' and Petitioner's submissions. Particularly as the parties agree on the essential facts, I will not recount the details here. In brief, since 1996, Plaintiffs and the Township have engaged in a difference of opinion-reflected in and comprised of public meetings, Zoning Hearing Board and court proceedings, zoning ordinances, newspaper stories, and settlement negotiations– relating to Plaintiffs efforts to operate and expand its facility, and to obtain a building permit to do so.

On March 28, 2002, Plaintiffs filed this lawsuit. Subsequently, at a regularly scheduled public meeting on May 1, 2002, attendees were advised of a proposed agreement to settle this litigation. The Township then adopted the resolution for settlement, which was encompassed by the Petition for Entry of Consent Order to Settle and Discontinue Civil Action that the parties jointly filed in this action. The Petition acknowledged that the parties had been engaged in litigation since 1996, and reached settlement after lengthy negotiation and discussion. Consistent with the Petition, on May 2, 2002, this Court entered a Consent Order settling and discontinuing the litigation. In addition, the Clerk of Courts closed the case on that date. The Consent Order recognized that the agreement "provides revenue and other considerations advancing the well being of the Township...." The agreement further entitled the Academy to its long-sought building permit, and the right to expand to 1200 residents by the year 2013.

Now pending is a Petition to Intervene pursuant to Federal Rule of Civil Procedure 24(a) (Docket No. 4). Petitioner, a resident of the Township, asserts two interests in the litigation:1) that the settlement endangers his safety, because of the number of residents it permits at Plaintiffs' facility; and 2) that the settlement moots his appeal of a decision of an April 2002 Zoning Hearing Board decision that entitled Plaintiffs to a building permit. The appeal is now pending in state court. If permitted to intervene, Petitioner will

ask that this Court vacate its Consent Order, in part on grounds that via settlement, the Township circumvented procedural requirements imposed by state zoning laws.[2] All parties to the litigation oppose intervention.

For the following reasons, the Petition to Intervene is denied.

## OPINION

Petitioner seeks to intervene as of right pursuant to Fed.R.Civ.P. 24(a). The burden of proving each element for intervention rests on the applicant. United States v. Alcan Aluminum, 25 F.3d 1174, 1181 n.9 (3d Cir. 1994). Rule 24(a) reads, in relevant part, as follows:

> (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action:
>
> ******
>
> (2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

### A. Adequacy of Representation

To be entitled to intervene, Petitioner must show that the Township does not or did not adequately protect his interests in the context of this litigation. Fed.R.Civ.P.24(a). In this respect, Petitioner has fallen short of meeting his burden.

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[2]Mr. Yaracs' Petition to Vacate Consent Order was received into the Court's file, but not docketed, presumably pending determination of the Petition to Intervene. Accordingly, that Petition to Vacate Consent Order is not before me for decision. Because of my decision today, the Petition will not be docketed.

An applicant's rights are not adequately represented under the following circumstances: (1) the interest of the applicant so diverges from those of the representative party that the representative party cannot devote proper attention to the applicant's interest; (2) there is collusion between the existing parties; or (3) the representative party is not diligently participating in the suit. E.g., Alcan Aluminum, 25 F.3d at 1186. "A party charged by law with representing the interest of the absent party – such as a municipality or a state with respect to its citizens – is presumed to provide adequate representation. E.g., Point Pleasant Canoe Rental, Inc. v. Tinicum Township, 110 F.R.D. 166, 168 (E.D. Pa. 1986). Petitioner has not demonstrated sharply diverging interests, collusion, or lack of diligence, or any other reason that representation was unsatisfactory in this case. Rather, Petitioner indicates that prior to the settlement, the Township adequately represented citizens' interests with regard to Plaintiffs' facility. Indeed, the face of the Consent Order suggests that the Township continued to represent the interests of its residents throughout the settlement phase of this litigation. For example, the Consent Decree prohibits Plaintiffs from housing violent offenders, and imposes on Plaintiffs a duty to notify the police and Township Crime Watch should a resident leave the premises unauthorized.

The mere fact that the Township entered into a settlement, the terms of which Petitioner dislikes, does not mean that the Township failed to represent Petitioner's interests as a citizen or property owner. "[A] consent decree may be simply the inescapable legal consequence of application of fundamental law to facts. That [Petitioner] would have been less prone to agree to the facts and would have taken a different view of the applicable law does not mean that the [Township] did not adequately represent [Petitioner's] interests in the litigation." Pennsylvania v. Rizzo, 530 F.2d 501, 505 (3d Cir. 1976). Petitioner asserts that the settlement is not favorable to the Township because it allows 1200 residents at the property by the year 2013. This argument, however, represents a too-narrow view of the interests accounted for by the Township in settling this matter. Expansion of Plaintiffs' facility was, on the face of the Consent Order, one consideration among many in the

parties' negotiations. For example, in agreeing to settlement, the Township expressly considered its revenues and financial well-being. In sum, Petitioner has not met his burden of establishing inadequate representation at any stage in this litigation. Accordingly, intervention will be denied on that basis.

**B. Interest in Subject of Action**

In order to intervene, Petitioner must also demonstrate that he has "an interest relating to the property or transaction which is the subject of the action," and that the disposition of the action may as a practical matter impair or impede his ability to protect that interest. Fed.R.Civ.P.24(a). Even if representation were adequate, I would deny leave to intervene based on Petitioner's failure to establish an interest of the type contemplated by Rule 24(a).

Although the applicable standards are notoriously ill-defined, it is settled that Rule 24(a)(2) requires a direct, significant interest in the property or transaction subject to the action. Donaldson, v. United States, 400 U.S. 517, 531, 91 S.Ct. 534, 27 L.Ed.2d 580 (1971). To have the right to intervene, therefore, the applicant must demonstrate that there is a "tangible threat" to a legally cognizable interest; it is not sufficient that the interest be general or indefinite, or incidentally affected. Harris v. Pernsley, 820 F.2d 592, 601 (3d Cir. 1987).

Here, Petitioner has simply not asserted a qualifying interest in the subject matter of the litigation. The subject of this lawsuit was the alleged deprivation of constitutional rights, and not a zoning matter. Specifically, Petitioner asserts that the settlement will threaten his safety, due to the housing of juvenile offenders at Plaintiffs' facilities; he further asserts that his interest in his zoning appeal has been harmed and rendered moot by the Consent Order. Even if these interests are considered significant, they are not directly implicated by the underlying civil rights litigation. As stated by another court denying intervention on similar facts, "[t]his is an action based on...federally protected rights...and is not a zoning matter." The Assisted Living Group, Inc. v. Upper Dublin Twp., No. 97-3427, 1997 U.S.Dist.LEXIS 19554 (E.D.Pa. Dec. 8,

1997); see also Halderman v. Pennhurst State School and Hosp., 97 F.R.D. 522, 524-25 (E.D.Pa. 1983). In other words, the Township either did or did not violate the Plaintiffs' constitutional rights, and resolution of that issue would not necessarily encroach upon Petitioner's physical safety or use of the courts.

To the extent that I must separately consider Petitioner's interest in the remedial phase of the case, [3] I reach a similar conclusion. As Petitioner asserts, certain aspects of the parties' settlement decree might eventually and indirectly affect Petitioner's physical safety. He does not, however, allege a sufficiently direct and immediate threat in that regard. The settlement authorizes Plaintiffs' facility to expand over a period of years until 2013, and there is no immediate or certain danger that Petitioner might suffer harm at the hands of one of Plaintiffs' residents. In other words, the feared dangers might not materialize. Similarly, the settlement might or might not conflict with the eventual outcome of Petitioner's zoning appeal. Petitioner continues to prosecute the appeal, which is still pending. [4] In addition, Petitioner does not

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[3]The facts before me are not analogous to the institutional reform litigation or far-reaching consent decrees of the type at issue in cases deemed appropriate for a bifurcated approach to the interest required for intervention. E.g., Pemsley, 820 F.2d at 601. In addition, Petitioner is too late to intervene for purposes of fashioning a remedy, rather than merely challenging a remedy already in place. Nevertheless, I briefly address this approach because it is clear that Petitioner's asserted interests in this litigation relate solely to the remedial phase of the case.

[4]The parties have not briefed the eventuality of a conflict between this Court's Consent Order and a state court decision finding Plaintiffs' building permit illegal. Even had the parties briefed the issue, I would not reach its substance because of ripeness concerns and my conclusion on intervention.

Notably, although Petitioner urges that the building permit issued pursuant to the settlement contravenes state law, several state and local adjudicating bodies have previously determined that Plaintiffs' facility has a legal right to operate and expand.

demonstrate that the settlement directly impinges a protectable legal right. For example, the Consent Decree did not purport to bind him or settle his legal claims, if any, against Plaintiffs or Defendants; interfere with his contractual rights; or affirmatively prevent him from seeking redress in court. The remote or general effects claimed here are not sufficient to justify intervention as of right, and Petitioner has not offered any authority or argument that persuades me to the contrary. For these reasons, I find that Petitioner does not have a legally cognizable interest in the remedial phase of this action, as contemplated by Rule 24(a).

As a final matter, I note that this view of Petitioner's interests best serves the various policies behind Rule 24 and the orderly administration of justice. For example, "the interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." Nuesse v. Camp, 385 F.2d 694, 700 (D.C.Cir. 1967). Permitting intervention here would be entirely incompatible with goals of efficiency, basic fairness, and he finality of judgments. Petitioner's pleadings make patently clear that intervention would create a discrete and tangential sub-lawsuit, focusing solely on the interpretation of municipal zoning ordinances and the ethical obligations of Pennsylvania's public officials, within this terminated federal civil rights litigation. In this particular case, the disruption that would attend intervention is unwarranted.

**C. Timeliness**

As discussed above, Petitioner's asserted interest is, essentially, limited to an interest in the subject matter of the settlement, rather than the litigation itself. To the extent that Petitioner intends to assert that the pre-settlement litigation provides a foundation for him to intervene, however, I would still deny his Petition. In that case, in addition to a lack of representational inadequacy and sufficient interest, I would find the Petition untimely.

Timeliness, as a general matter, is considered in light of the totality of the circumstances. Alcan Aluminum, 25 F.3d at 1181-

82. The following factors should guide a court's inquiry into the timeliness of a motion to intervene as of right: (1) the stage of the proceedings; (2) the prejudice that delay may cause the parties; and (3) the reason for the delay. Mountain Top Condominium Ass'n v. Dave Stabbert Master Builder, Inc., 72 F.3d 361, 369 (3d Cir. 1995). Although a final judgment is not a bar to filing a motion to intervene, "[t]here is considerable reluctance on the part of the courts to allow intervention after the action has gone to judgment and a strong showing will be required of the applicant." 7C Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 1916, at 444-45 (West 1986).[5]

Here, the pertinent factors weigh against permitting intervention. For example, the case has moved past its final stages. Indeed, because the matter is closed, there is no longer any proceeding in which to intervene. Moreover, reopening a matter closed by consent will prejudice the parties, who have invested time and effort, and accounted for a wide range of concerns, in resolving their dispute. E.g., Farmland Dairies v. Commissioner of the New York State Dept. of Agriculture and Markets, 847 F.2d 1038, 1044 (2d Cir. 1988); City of Bloomington v. Westinghouse Electric Corp., 824 F.2d 531, 535 (7th Cir. 1987).

In addition, Petitioner offers no persuasive reason for the delay in seeking to protect his asserted interests. Petitioner did not seek to intervene in this action until May 31, 2002, almost one

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[5] "A motion to intervene after entry of a decree should be denied except in extraordinary circumstances." Delaware Valley Citizens Council for Clean Air v. Pennsylvania, 674 F.2d 970, 975 (3d Cir. 1982). This proposition has been limited to situations when a proposed intervenor seeks to relitigate the underlying lawsuit, rather than an ancillary matter. E.g., Pansy v. Borough of Stroudsburg, 23 F.3d 772, 780 n.7 (3d Cir. 1994). Pansy, however, involved a media challenge to a confidentiality order issued attendant to settlement, in which the intervenor would litigate a question entirely unrelated to the substance of the lawsuit itself. Here, Petitioner's asserted interests for Rule 24(a) purposes are tangential, but the ultimate question he seeks to litigate (i.e., that of Plaintiffs' permit) was central to the underlying lawsuit. This situation is materially distinguishable from the ancillary intervention at issue in Pansy. Accordingly, the principles and reasoning enunciated in Delaware Valley remain persuasive in this case.

month after the case was settled and discontinued. At an earlier stage in these disputes, he knew, or should have known, of the alleged risks to his physical safety and zoning appeal, and worked to protect those interests. The pleadings indicate that the parties were engaged in a long and well-publicized dispute regarding the Township's ordinances, and the number of residents at Plaintiffs' facility. The facts alleged in Petitioner's own fillings indicate that he closely monitored the dispute. Under the circumstances, Petitioner's suggestion, that he did not intervene in the litigation because a newspaper article about the litigation stated that Plaintiffs sought damages (rather than a permit), is difficult to accept. Petitioner has not demonstrated that circumstances prevented him from making an effort to protect his interests at an earlier stage in this proceeding. Even without holding him to knowledge of the Complaint at the time that it was filed, there are no extraordinary circumstances that would warrant intervention at this stage in the litigation, and the totality of the circumstances lead me to conclude that the Petition to intervene is untimely.

**CONCLUSION**

In conclusion, considering all of the pertinent factors and circumstances, I conclude Petitioner has not met his burden of demonstrating that he has the right to intervene in this case. Without minimizing Petitioner's interests in his physical safety and legal processes, this litigation and Rule 24(a) simply do not provide the appropriate routes for vindicating those interests. Because he will not be permitted to intervene, I need not reach the merits of Petitioner's request to vacate the Consent Order. For all of the above reasons, the Petition to Intervene will be denied.

An appropriate Order follows:

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DATE FILED: AUGUST 19, 2002

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 02-606

SUMMIT TOWNSHIP and C.S.C. ACADEMY, INC.,

Plaintiffs,

-vs-

THE TOWNSHIP OF SUMMIT,

Defendant.

---

WALLY YARACS,

Movant.

AMBROSE, District Judge.

**ORDER OF COURT**

AND NOW, this 19th day of August, 2002, it is hereby ORDERED that Mr. Yarac's Petition to Intervene (Docket No. 4) is DENIED.

BY THE COURT:

Donetta W. Ambrose
U.S. District Judge